



**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, 15TH REGIMENTAL SIGNAL BRIGADE  
FORT GORDON GEORGIA 30905-5000

ATZH-TB

09 July 2010

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Policy Letter #35: Proper Treatment of Soldiers Pending UCMJ and Article 13, UCMJ Credit

1. REFERENCES:

- a. Manual for Courts-Martial United States, 2008 edition
- b. Army Lawyer, Volume 36, December 2006
- c. Article 13, UCMJ, Punishment Prohibited Before Trial

2. As Leaders, we must remember that today's Soldiers must be treated with dignity and respect, instilled with pride, and molded into strong leaders. That same concept also applies to Soldiers that are pending UCMJ and other legal actions.

3. Article 13 covers the prohibition against pre-trial punishment and fundamentally embodies the precept that an accused service member is presumed innocent until proven guilty. As such, Article 13 safeguards constitutional due process protections by preventing the imposition of punishment prior to conviction. Moreover, Article 13 prohibits imposing pre-trial punishment by anyone exerting military authority over the accused.

4. Illegal pre-trial punishment may manifest itself in two distinct ways. First, punishment can take the form of unreasonable or harassing restraint that creates a specter of guilt shadowing a service member prior to trial. Second, punishment may result from a harsh confinement condition imposed on a service member. In either instance, the punishment may be intentional or a product of circumstances giving rise to an impermissible inference that an accused or suspected service member is being punished.

5. The following are six of the most common instances where Article 13 credit is warranted:

- a. Public Apprehension- military courts consider the intentional public apprehension of a suspected service member as an act violating Article 13, particularly if the arrest or detainment is conducted in the presence of the service member's unit.

- b. Humiliation or Ridicule- military courts also generally find that an overt and intentional attempt to publicly humiliate or ridicule an accused service member constitutes illegal punishment. For example, removing the accused Soldier's unit crest and denouncing him in front

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of his fellow troops prior to his arrest by Criminal Investigation Division agents may produce an Article 13 violation.

c. Transfer to Special or Different Unit- In many instances, accused service members pending court-martial are not placed in pre-trial confinement. Nevertheless, attempts by the chain of command to transfer the accused into a special unit without demonstrating a legitimate government interest may produce an Article 13 violation.

d. Display of Military Uniform- Attempts to visually distinguish an accused service member by requiring different uniforms or removal of rank, name tag, or other insignia, can be considered prohibited punishment under Article 13.

e. Withholding of Pay- The government may withhold a service member's pay without violating Article 13 so long as the regulation or activity is not intentionally punitive or punitive in effect. If the government erroneously withholds a service member's pay this may produce an Article 13 violation.

6. The remedy for noncompliance of Article 13 is administrative credit against the sentence adjudged for any confinement. If no confinement is adjudged, then the credit is used against any other type of punishment ordered. In the most extreme cases, the case could be dismissed.

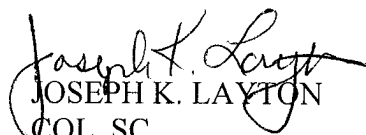
7. I will not tolerate any violations of this policy letter that may result in Article 13 credit. It is a negative reflection of the command when procedures are handled incorrectly. As leaders we should be taking care of Soldiers and ensuring that we maximize the usage of the systems in place.

8. This policy letter is punitive and violations of these provisions may subject offenders to non-judicial or judicial action under the Uniform Code of Military Justice.



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9. The point of contact for this policy letter is CPT Dixon Merkt, 791-4421, [dixon.merkt@us.army.mil](mailto:dixon.merkt@us.army.mil).

  
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COL, SC  
Commanding

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